

Ex. Q

**Excerpt of Transcript for
Conference with Judge Broderick on
May 26, 2022 - Chen's Counsel
Admits to Fabricating the TCS on
Record**

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERIWAY CORPORATION,

Plaintiff,

v.

19 Civ. 9407 (VSB)

MAY YAN CHEN, et al.,

Defendants.

Telephone Conference

New York, N.Y.
May 26, 2022
11:00 a.m.

Before:

HON. VERNON S. BRODERICK,

District Judge

APPEARANCES

PETER SCOTT WOLFGAM
Attorney for Plaintiff

-and-

STRATUM LAW LLC
Attorneys for Plaintiff
BY: XIYAN ZHANG

SCHRIER, FISCELLA & SUSSMAN, LLC
Attorneys for Defendants

BY: RICHARD ERIC SCHRIER
-and-

SHAYNE LAW GROUP, P.C.
Attorneys for Defendants
BY: WILLIAM C. SHAYNE

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1 MR. SCHRIER: This is really a red herring, and
2 it's -- Mr. Wolfgram has created this whole scenario and is
3 advancing it, but it's a simple situation.

4 Ms. Chen, before going into business herself in 2012,
5 worked for another customs broker. In the normal course of
6 business, a customs broker needs to have a power of attorney
7 signed, as you probably know, to be able to represent someone
8 at the customs on their behalf. And with that there are terms
9 and conditions. Ms. Chen used the form that was used by her
10 employer when she opened up her own business after receiving
11 her license as a customs broker. She'll be testifying, and
12 we've said as an offer of proof, that her -- that she got that,
13 gave it to a local printer, they printed up the forms for power
14 of attorney and the terms and conditions, and it was one-page
15 terms and conditions.

16 Mr. Shayne is -- his specialty is international
17 import/export law. He's been working in this field for 30,
18 almost 40 years, I think, and whenever -- and we represent
19 quite a number of customs brokers. In the normal course of
20 Mr. Shayne's business, he keeps abreast of the continuing
21 decisions related to customs brokers and the import of
22 products, and as a result what he's done over the years, in the
23 normal course of his business is he updates the terms and
24 conditions. Whenever he gets a new client, he doesn't even
25 bother looking at the terms and conditions they use because it

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1 doesn't matter. He just says: Here's the new one. Start
2 using it. And he's known in the field to be an expert in this
3 area.

4 When Mr. Shayne was first retained by Ms. Chen, which
5 was after the summons and complaint was filed in this case, he
6 did precisely what he did with all his other clients and said:
7 Here's the new terms and conditions. Start using it. And they
8 started using it, put it on their website.

9 The terms and conditions that Mr. Wolfgram is saying
10 were fabricated by Mr. Shayne, yes, they were fabricated by
11 Mr. Shayne, and they were given to the client after this case
12 started. It has nothing whatsoever to do with the issues in
13 this case. The issues in this case revolve around the initial
14 one.

15 Now, with regard to the specific question, at the last
16 conference that we had with the magistrate judge, which was
17 earlier this week, the magistrate judge asked us to go back and
18 ask our client to see if he could find -- backtrack for a
19 second. I'm sorry.

20 They asked for the identity of all the clients who
21 we've previously given these terms and conditions, as we claim
22 that they were sent the terms and conditions, and they claim
23 they were not. That's the key issue. So with all the
24 discussion by Mr. Wolfgram, there is a sharp issue. They say
25 they didn't get it; we say they did. It's a sharp issue, and

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1 of the dismissal without opposition, that produced an order of
2 the court, and therefore this case is no longer viable because
3 of the prior decision. That's why it's important for them to
4 be heard together.

5 THE COURT: All right. As I said, I don't -- I think
6 that that will be fine, and I don't know whether -- is the
7 briefing on the case that's currently -- that's here for
8 reargument, or however it's styled, is that fully briefed?

9 MR. SCHRIER: The case -- in the Ameriway case, that
10 motion has been fully briefed and submitted. The one that's --
11 I'm sorry?

12 THE COURT: Waiting on mine in the 12(b)(6)?

13 MR. SCHRIER: Correct.

14 THE COURT: All right. Thank you.

15 All right. Anything else, Mr. Wolfgram?

16 MR. WOLFGRAM: No, your Honor. Appreciate it.

17 THE COURT: All right. Mr. Schrier, anything else?

18 MR. SCHRIER: No. We appreciate the Court's time.

19 Thank you so much.

20 THE COURT: OK. Thank you very much, everybody.
21 We'll stand adjourned. Please, everyone, stay safe.

22 (Adjourned)